

Application No.:10/743,293
Art Unit: 2875

Attorney Docket No. 21978.00
Confirmation No. 7856

REMARKS

By the present amendment, Applicant has amended Claims 1 and 6-9, and canceled Claims 2-5. Claims 1 and 6-9 remain pending in the present application. Claim 1 is an independent claim.

In the recent Office Action the Examiner rejected Claims 8 and 9 because of a minor informality. Claims 1-3, 5 and 7 were rejected under 35 U.S.C. § 102(b) as being anticipated by Pratt (U.S. Patent No. 6,409,367). Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Pratt in view of Dollesin (U.S. Patent No. 6,260,752). Claims 6 and 8-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pratt in view Gamble, Sr. (U.S. Patent No. 6,302,567) and Gold (U.S. Patent No, 5,683,165).

With regard to the Examiner's objection of Claims 8 and 9, Applicant has amended the instant claims to correct the noted informality. Specifically, the term "cross bar" has been changed to read -- crossbar--, as recited in the preceding claims.

Regarding the grounds of rejection based on prior art, Applicant will advance arguments hereinbelow to illustrate the manner in which the invention defined by the newly introduced claims is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

Amended independent Claim 1 now defines a lighting and safety system for a trailer hitch that includes a crossbar, a mounting bar, an accessory mounting post and a elevated lighting assembly. The crossbar is characterized as being of unitary construction and as having first and second ends and a longitudinal center. The mounting bar is set forth as being perpendicularly attached to the longitudinal center of the crossbar. The accessory mounting post is set forth as being attached to the mounting bar, and is further characterized as extending perpendicular to a plane in which the crossbar and the mounting bar are disposed. The elevated lighting assembly is defined as including (a) a lighting assembly post having the lower end removably mounted to the mounting post and an upper end vertically extending substantially beyond the lower end; (b) an accessory crossbar having first and second ends and a longitudinal center, and being perpendicularly disposed on the upper end of the accessory post; and (c) a lamp assembly disposed at each of the ends of the accessory crossbar. The claimed lighting and safety system further includes a lamp assembly at each end of the crossbar, and a wiring harness in electrical communication with each of the lamp assemblies. Dependent Claims 6-9 have been revised in the interest of continuity.

Applicant contends that patent to Pratt is deficient as an anticipatory reference against the present claims. It should be noted that independent Claim 1 has been amended to incorporate the subject matter of Claim 4 and intervening Claim 2. Further, it is Applicant's contention that the combination of Pratt and Dollesin is insufficient to render the presently claimed invention obvious within the meaning of 35 U.S.C. 103. In this regard, the Pratt patent generally discloses a rear-mounted beacon-light system adapted to

be coupled to the rear of a vehicle. Pratt's beacon is mounted at the upper portion of a leg and the lower portion of the leg is pivotally coupled to a mount member. A pair of extensions are connected to the mount member and a rear-facing light is affixed at each end of the extensions. However, Pratt fails to teach or suggest an elevated lighting assembly having the combination of structural features set forth in original Claim 5 and now defined by amended independent Claim 1.

In order to supplement the above noted deficiencies of the primary reference to Pratt, the Examiner relies upon the secondary reference to Dollesin. The patent to Dollesin was relied upon by the Examiner to allegedly show an elevated crossbar having a lamp assembly at each end thereof. The Examiner thus concludes that it would be obvious to one of ordinary skill in the art to modify the lighting system of Pratt by incorporating the elevated crossbar with lamp assemblies of Dollesin. Notwithstanding, the Dollesin patent realistically teaches an external equipment carrier with a cargo holder that includes a scissors jack having a horizontal support member that moves in a vertical direction guided by a guide rail when the jack is operated. An extendable arm is connected to a post that is vertically slidable within the guide rail and a pair of mirrors and brake lights are connected to the extendable arms. Clearly, there appears no motivation or guidance in the prior art that the extendable brake lights described by Dollesin could be incorporated into the beacon-light system taught by Pratt. In fact, the prior art would "teach away" from such a modification as suggested by the Examiner since to do so would destroy the essential features of both inventions as taught by each the references.

Applicant notes that obviousness cannot be shown by combining the teachings of the prior art unless there is some teaching or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984); *In re Geiger*, 815 F.2d at 688, 2 USPQ2d at 1278 (Fed. Cir. 1987). Further, the Federal Circuit in *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed.Cir. 1999) deprecated rejections based upon "a hindsight-based obviousness analysis" and emphasized that what is required is a "rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." The Court said that "the showing must be clear and particular" and that broad conclusory statements regarding the teaching of multiple references and "a mere discussion of the ways that the multiple prior art references can be combined to read on the claimed invention" is inadequate. Absent an explicit suggestion or teaching of the combination in the prior art references, there must be "specific...findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis".

Applicant contends that one skilled in the art would not be motivated or guided by the prior art to combine these references in the manner suggested by the Examiner since the carrier/cargo holder disclosed by Dollesin is so structurally and functionally unrelated Pratt's beacon lighting system. Moreover, Applicant further contends that even if the references were properly combinable, the above noted deficiencies of the primary reference to Pratt are not remedied by the teachings afforded by the secondary references to Dollesin, Gamble, Sr. or Gold. Thus, one of ordinary skill in the art without the benefit of Applicant's own

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disclosure would not be capable of arriving at the presently claimed invention by combining the references in the manner suggested by the Examiner since none of references cited or applied of record realistically suggests the essential combination of features that forms the basis of the instant claims.. For at least these reasons, Applicant respectfully submits that independent Claim 1, as amended, and corresponding dependent Claims 15-20 are allowable over the prior art of record.

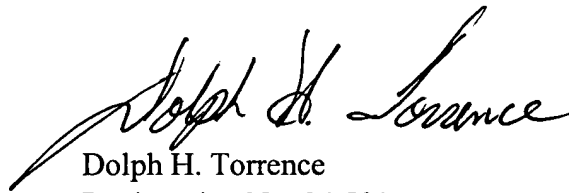
Applicant contends that the patent to Daun fails to realistically teach or reasonably suggest Applicant's presently claimed method. Moreover, it is Applicant's contention that one of ordinary skill in the art, furnished only with the realistic teachings afforded by the Daun patent and without the benefit of Applicant's own disclosure, would not be capable of arriving at the method defined by the present claims. For at least these reasons, Applicant respectfully submits that independent Claims 1 and 10, as amended, and corresponding dependent Claims 6-9 are allowable over the prior art of record.

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For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dolph H. Torrence". The signature is fluid and cursive, with a long horizontal stroke at the end.

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